



C.M.P.(MD)No.11266 of 2019
in
W.A.(MD)SR.No.80223 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

C.M.P.(MD)No.11266 of 2019
in
W.A.(MD)SR.No.80223 of 2019
and
W.A.(MD)SR.No.80223 of 2019
(subsequently numbered as W.A.(MD)No.1172 of 2021)

The Secretary to Government,
Industries Department,
Fort St.George, Chennai-600 009. ... Petitioner/Appellant

Vs.

C.A.Shanmukhavel ... Respondent/Respondent

Prayer in C.M.P.(MD)No.11266 of 2019: Petition filed under Section 5 of Limitation Act, to condone the delay of 2021 days in filing the above appeal.

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent to set aside the order passed by this Court in W.P.(MD)No.10627 of 2007, dated 06.02.2014.

For Petitioner :Mr.R.Baskaran
Additional Advocate General
assisted by Mr.S.P.Maharajan
Special Government Pleader

For Respondent :Mr.Sricharan Rangarajan



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Senior Counsel for Mr.C.Jeganathan

ORDER

(Order of the Court was delivered by **S.S.SUNDAR, J.**)

This petition is filed to condone the delay of 2021 days in filing the above appeal as against the order passed in the Writ Petition in W.P.(MD)No.10627 of 2007, by order, dated 06.02.2014.

2.Brief facts, that are necessary for the disposal of this petition, are as follows:

2.1.The respondent in this petition was joined as Geological Assistant in Geology branch, Industries and Commerce Department in the year 1974. The petitioner was promoted as Assistant Director of Geology and Mining on 12.01.1979. A charge memo was issued to the respondent on 22.12.1999 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, relating to misinterpretation of *suo motu* order and leasing of rough stone quarry during the year 1994.

2.2.The first charge against the respondent is that he issued permit to ex-lessees to show illegal favour and the second charge is that he willfully suppressed major facts of arrears and recommended for the



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grant of lease in favour of the rough stone quarry operators. It is admitted that the Enquiry Officer submitted a report finding that though the respondent has misinterpreted the status quo order, there was no revenue loss to the Government and the charge on the first count was found against the respondent. The charge on the second count was also held not proved against the respondent.

2.3. Thereafter, the respondent submitted his explanation on 14.11.2004. However, the disciplinary proceedings, which is pending from 2004, is not concluded. Hence, the petitioner filed a Writ Petition in W.P.(MD)No.2090 of 2006, when he was about to retire on 31.01.2006. When the Writ Petition was pending, the respondent attained the age of superannuation. However, the respondent herein was not allowed to retire from service, but retained in service on account of the disciplinary proceedings pending against him.

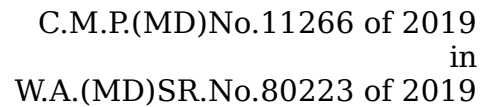
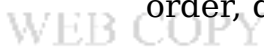
2.4. The Writ Petition filed by the respondent in W.P.(MD)No. 2090 of 2006 was disposed of by directing the petitioner herein to complete the enquiry proceedings on or before 20.07.2006. It was further directed that the respondent will be deemed to have retired on 31.01.2006, if the disciplinary proceedings is not concluded on or before



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20.07.2006 and the enquiry, which was completed, shall stand terminated. It is admitted that no final order was passed within the time schedule prescribed by this Court in connection with the charge memo issued on 22.12.1999. However, vide G.O.(2D)No.78, Industries (E1), Department, dated 05.10.2007, the respondent was allowed to retire on superannuation from 31.01.2006 without prejudice to the disciplinary proceedings pending against him. Challenging the same, the respondent filed W.P.(MD)No.10627 of 2007. The said Writ Petition was allowed by order, dated 06.02.2014 directing the petitioner to allow the first respondent to retire from service with effect from 31.01.2006, as if no charge is pending against him and to give all monetary and attendant benefits.

2.5.During the pendency of the Writ Petition in W.P.(MD)No. 10627 of 2007, vide G.O.(2D)No.38, Industry (E1) Department, dated 27.09.2012, final order was passed pursuant to the charge memo, dated 22.12.1999 by imposing a penalty of cut in pension at Rs.200/- per month for a period of one year. It is also admitted before this Court that the final order pursuant to the charge memo, dated 27.09.2012 vide, G.O(2D)No.38 was also challenged by the respondent in W.P.(MD)No. 4461 of 2013 and the said Writ Petition was allowed by this Court by



2.6. The above Writ Appeal is directed against the order of the learned Single Judge, dated 02.12.2014 in W.P.(MD)No.10627 of 2007 quashing the subsequent order allowing the respondent to retire on superannuation from 31.01.2006 as if no charge is pending against him and to give all monetary benefits and attendant benefits. However, the appeal was filed with the delay of 2021 days.

3. Though a lengthy affidavit is filed in support of this petition to condone the delay of 2021 days, this Court is unable to find any reason explaining the cause for the delay. In paragraph 14 of the affidavit filed in support of the petition, the petitioner has stated as follows:

“14)When these issues are being considered, the District Collector, Madurai has addressed the Government stating that Rs. 16,000 crore loss have been caused in the issue of Madurai district granite quarrying. Subsequently, Thiru U.Sagayam, I.A.S., was appointed as Special Officer/Legal Commissioner by the Hon'ble High Court to look into the issue of granite quarrying in Madurai district. Thiru U.Sagayam, I.A.S., in his report dated 23.11.2015 has stated that Thiru C.A.Shanmukhavel and another one officer had liberally permitted illicit quarrying and transporting the granite on unparalleled scale in Madurai district resultign in considerable financial loss to the tune of Rs.18,000 crore. This matter occupied the most of the administrative work and the Respondent was also involved in the cases filed by DVAC, Madurai and cases have been filed in the local Criminal Court at Madurai.”



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4.The learned Additional Advocate General drew the attention of this Court to the above extracted portion and submitted that the respondent, who is involved in a serious charge, cannot be allowed to retire from service and hence, the petitioner should be given an opportunity to make a decision on merits. The learned Additional Advocate General also relied upon a report of Mr.U.Sagayam, I.A.S., dated 23.04.2015. However, this Court is of the view that the said report is not in relation to the charge memo issued to the respondent in 1999, which is the subject of the appeal.

5.From the report, it is seen that the respondent has miserably failed to take follow up action to vacate the stay in the Honourable High Court in relation to granite mining. It was observed by Mr.U.Sagayam that numerous violations would not have occurred, if Mr.C.A.Shanmukhavel, respondent herein, had remained diligent and committed to his duty by detecting the irregularities faithfully in the granite mining arena. The lackadaisical attitude with which Mr.C.A.Shanmukhavel discharged his duties is deplorable warranting earlier retribution. Even from the report, the petitioner is unable to point out any irregularity committed by the respondent in relation to the charge memo issued to him in 1999. Merely because, certain



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irregularities were found against the respondent in a report, the same cannot be relied upon to find the respondent guilty of the allegations, which are found in the report. That apart, the report can hardly be an explanation for the delay.

6.The learned Additional Advocate General relied upon a judgment of Honourable Supreme Court in the case of ***State of Tamil Nadu vs Anbai Kingston Philips and others***, reported in ***(2015) 15 SCC 208***, wherein, the Honourable Supreme Court has held as follows:

“9.The fact that delay is inordinate stretching over nearly 10 years, cannot be denied. At the same time, it is fairly well-settled that the State functions in an impersonal fashion and that the ordinary standards, applicable to a litigant pursuing his own case, do not at times apply stricto sensu to the action or inaction of the State. That apart the enquiry conducted by the Registrar (Vigilance) of the High Court has not in the instant case suggested any collusion at the level of the State Government. What appears to have actually happened is that the appeal papers were presented within the time but repeatedly re-presented without fully removing the defects, in which process there was considerable delay. This was mainly because the officers concerned do not appear to have acted diligently. There is no gainsaying that the two range officers who have been indicted in the enquiry report were themselves under the supervisory control of higher officers who ought to have looked into the matter and ensured that the papers were refiled in time. Suffice it to say, we are in the light of the enquiry report submitted by the Registrar (Vigilance) inclined to condone the delay no matter inordinate in its length. We, however, do so subject to payment of costs of L50,000/- (Rupees Fifty Thousand) which amount shall be deposited in the Advocates' Welfare Fund, if there is any, failing which with the High Court Legal Services Committee.”

7.This Court is of the view that the judgment of the Honourable



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Supreme Court cannot be applied in the present case, where the facts are entirely different. From the dates and events, it is seen that the respondent has not only filed the Writ Petition in W.P.(MD)No.2090 of 2006, but also filed successive Writ Petitions for issuing Mandamus to direct the petitioner to pass final orders in relation to the charges, which were framed against him in 1999.

8.As a matter of fact, Contempt Petition was also filed by the respondent against the petitioner to implement the order, dated 03.11.2006 in W.P.(MD)Nos.1772 and 1773 of 2006, which were disposed of by directing the petitioner to pass final order with respect to the pending allegations against the respondent on or before 31.01.2007. Despite a specific direction was issued in several Writ Petitions to conclude the enquiry proceedings and the respondent is deprived of his retirement benefits on account of pendency of disciplinary proceedings, which were initiated for the irregularities alleged to have been committed by the respondent in 1999, the petitioner has not complied with the directions of this Court in the Writ Petitions.

9.The petitioner cannot take advantage of their own wrong to justify their conduct in filing the Writ Appeal with an inordinate delay of



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2021 days. This Court is of the view that the delay will cause serious hardship and inconvenience to the respondent. It is stated that the respondent is now aged about 73 years old. Pursuant to the superannuation, he was not permitted to retire on 31.01.2006 and unable to get his retirement benefits and it will be inequitable and unfair to deprive him of his terminal benefits. The respondent has suffered monetary loss, which cannot be compensated by adding a formal interest.

10.Having regard to the facts and circumstances of the case, this Court is unable to find any reason or justified cause for the inordinate delay of 2021 days. Hence, this petition is dismissed.

11.Since the delay was condoned without serving notice to the respondent earlier, the Writ Appeal was numbered pursuant to the order of this Court, dated 04.06.2021 condoning the delay of 2021 days. Subsequently, the order, dated 04.06.2021 condoning the delay was recalled vide order, dated 19.07.2022 in a petition filed by the respondent in C.M.P.(MD)No.5697 of 2021. Hence, the status-quo anti should be restored and accordingly, the Writ Appeal is restored to its original position at SR stage. In view of the dismissal of petition to condone the delay, W.A.(MD)SR.No.80223 of 2019 (subsequently



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numbered as W.A.(MD)No.1172 of 2021) is rejected at SR stage itself.
Registry is directed to strike off the number in W.A(MD)No.1172 of 2021
from its Registers forthwith. No costs.

[S.S.S.R., J.] [S.S.Y., J.]
27.07.2022

Index : Yes / No

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Copy to:
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.



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